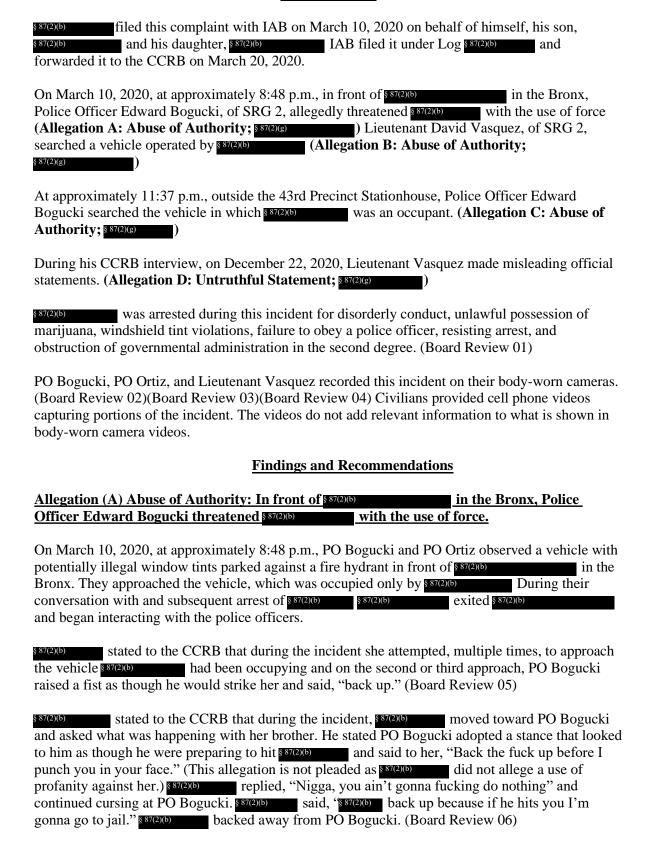
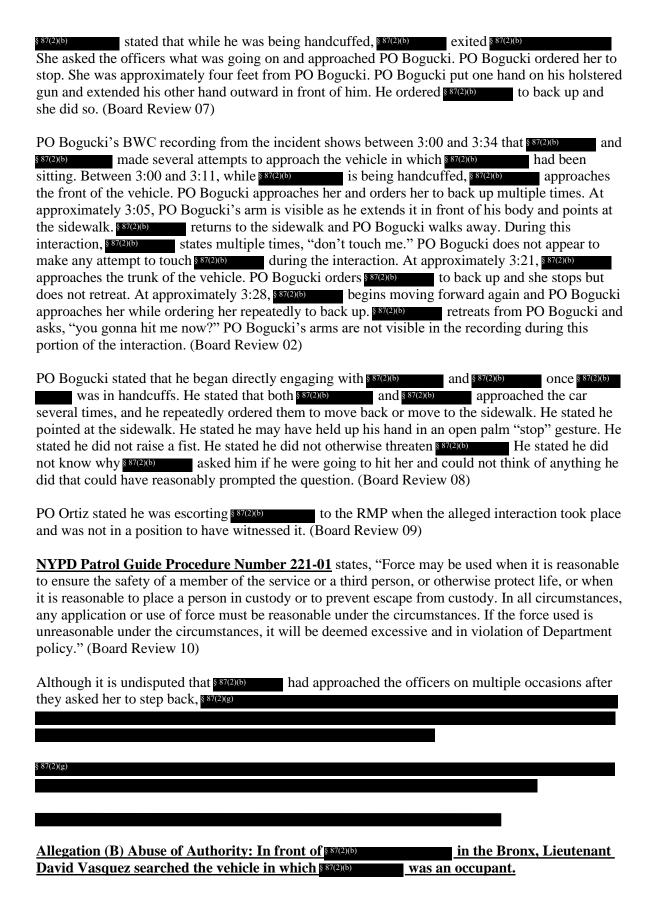
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ Force		Discourt.	☑ U.S.
Chris Olmsted		Squad #9	202002284	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precinc	t: 18	Mo. SOL	EO SOL
Tuesday, 03/10/2020 8:48 PM, Tuesday, 03/10/2020 11:37 PM, Tuesday, 12/22/2020 12:05 PM		In front of \$87(2)(b) 43rd Precinct Stationhouse; at the CCRB		43	9	/10/2021	4/27/2022
Date/Time CV Reported		CV Reported At:	How CV Reported	: Date/T	Time Rec	eived at CC	RB
Tue, 03/10/2020 9:38 PM		IAB	Phone	Fri, 03	3/20/2020	8:10 AM	
Complainant/Victim	Туре	Home Addre	ess				
Witness(es) Home Address							
Subject Officer(s)	Shield	TaxID	Command				
1. LSA David Vasquez	00000	916845	SRG 2				
2. POM Edward Bogucki	16654	957394	SRG 2				
Witness Officer(s)	Shield N	o Tax No	Cmd Name				
1. POM Luis Ortiz	01133	956142	SRG 2				
Officer(s)	Allegatio	on		I	nvestig	ator Recor	nmendation
A.POM Edward Bogucki	Abuse: C in the Bre \$ 87(2)(b)	Abuse: On March 10, 2020, in front of [887(2)(b)] in the Bronx, Police Officer Edward Bogucki threatened with the use of force.					
B.LSA David Vasquez	Abuse: On March 10, 2020, in front of \$87(2)(b) in the Bronx, Lieutenant David Vasquez searched the vehicle in which \$887(2)(b) was an occupant.						
C.POM Edward Bogucki	Stationho	Abuse: On March 10, 2020, outside the 43rd Precinct Stationhouse, Police Officer Edward Bogucki searched the vehicle in which \$87(2)(b) was an occupant.					
D.LSA David Vasquez	Lieutena	Untruthful Stmt.: On December 22, 2020, at the CCRB, Lieutenant David Vasquez provided a misleading official statement to the CCRB.					

## **Case Summary**





It is undisputed that Lieutenant Vasquez searched the vehicle in which struck was an occupant. It is undisputed that Lieutenant Vasquez did not have a search warrant for the vehicle. It is undisputed that this search occurred at the scene and was distinct from the inventory search of the vehicle that was conducted and documented by officers at the precinct later that night. It is undisputed that unburned marijuana was discovered on struck sperson and in the trunk of the vehicle during the inventory search at the stationhouse. It is undisputed that no marijuana or evidence of marijuana was recovered from the cab of the vehicle at any point.

PO Bogucki stated that when strain opened the door of the vehicle at the start of their interaction, PO Bogucki smelled a strong odor of marijuana coming from the vehicle. PO Bogucki stated he can identify the smell of marijuana due to his training and his experience encountering marijuana as a police officer. He did not see a source of the smell. He stated that no evidence of recently burned marijuana was ever recovered from either strain or the vehicle. (Board Review 08)

PO Ortiz stated that he opened the passenger side door of \$87(2)(b) are s vehicle and observed nothing that made him suspect marijuana was involved in the incident. He stated that he first became aware of marijuana later in the incident when officers searched \$87(2)(b) and discovered a quantity on \$87(2)(b) are s person. (Board Review 09)

Lieutenant Vasquez initially stated that when he arrived on scene, PO Ortiz told him that the car smelled of marijuana. He stated he based his decision to search the vehicle on that information. (Board Review 11)

Lieutenant Vasquez's body-worn camera video shows that when Lieutenant Vasquez arrived, PO Bogucki gave him a summary of what had happened thus far. PO Bogucki does not mention marijuana. At the end of the summary, Lieutenant Vasquez asks if officers had searched the car. PO Bogucki states that they had not. Lieutenant Vasquez states, "ok, we'll go through the car." (Board Review 04)

After viewing his BWC video, Lieutenant Vasquez recalled that it had been PO Bogucki, not PO Ortiz, who had given him the summary of the incident. He further recalled no officer made him aware of marijuana before he ordered the search of the vehicle. Lieutenant Vasquez recalled that he initially made the decision to do a "plain view" search of the driver's area, and that as he approached the vehicle, he independently smelled the odor of marijuana coming from inside. He stated he could not tell the difference between burned and unburned marijuana. He stated he was hesitant to describe the smell as "strong" and could not say whether in his judgment marijuana had recently been smoked in the vehicle. He stated that no evidence of recently burned marijuana was recovered during the incident. He found no evidence of marijuana when he searched the vehicle on scene. Lieutenant Vasquez stated that he was not aware that marijuana was recovered from on scene. (Board Review 11)

Lieutenant Vasquez's body-worn-camera recording is continuous between Lieutenant Vasquez's arrival on scene through his search of the vehicle. No officer discusses marijuana with him during that time. (Board Review 04)

stated that persons had smoked marijuana in the vehicle, but not within a month of the incident. He stated that no one, including himself, had smoked marijuana in the vehicle on the day of the incident. (Board Review 07)

In People v. Norman, 142 A.D.3d 1107 (2016), the Appellate Division of the Supreme Court of

New York held that probable cause existed for an officer's warrantless search of a defendant's vehicle "based on an experienced narcotics officer's detection of the odor of burnt marihuana emanating from the defendant's parked vehicle." (Board Review 12) The decision cites People v. Chestnut, 43 A.D.2d 260 (1974), in which the Appellate Division of the Supreme Court of New York held that officers had probable cause to conduct a warrantless search of a defendant's vehicle "where two police officers, qualified by training and experience, detected what they considered to be the distinctive odor of marihuana smoke." (Board Review 13)

Lieutenant Vasquez stated that he smelled marijuana coming from the vehicle and searched it as a result; however, Lieutenant Vasquez's statement changed substantially after he viewed body-worn camera video of the incident that contradicted his initial account. His final recollection was of an odor of marijuana significantly less obvious and intense than the one PO Bogucki described.

PO Ortiz stated there was no evidence of marijuana at all until some was taken from which point Lieutenant Vasquez had already searched the vehicle. While stated that persons had smoked marijuana in the vehicle in the past, he clarified that no individual had smoked marijuana in the vehicle that day or within a month of it. While marijuana was eventually recovered both on street sperson and from the trunk of the vehicle, no evidence of burned marijuana was recovered during the search of street sperson, the search of the vehicle on scene, or the inventory search at the stationhouse. None of the body worn camera footage from PO Bogucki, PO Ortiz, or Lieutenant Vasquez contains any mention of the marijuana until after Lieutenant Vasquez has searched the vehicle.

People v. Norman cites "the odor of burnt marihuana." People v. Chestnut cites "the odor of marihuana smoke." Lieutenant Vasquez stated he was generally incapable of distinguishing the smells of burnt and unburnt marijuana, and that during the incident he could not judge whether an individual had recently smoked marijuana in sylving so vehicle. In any event, the evidence supporting the presence of an odor of marijuana coming from the vehicle, burnt or otherwise, is challenged by the directly contradictory testimony of PO Ortiz, the disparate testimony of Lieutenant Vasquez and PO Bogucki, and the lack of corroborating discussion between officers on BWC. Sy(2)(g)

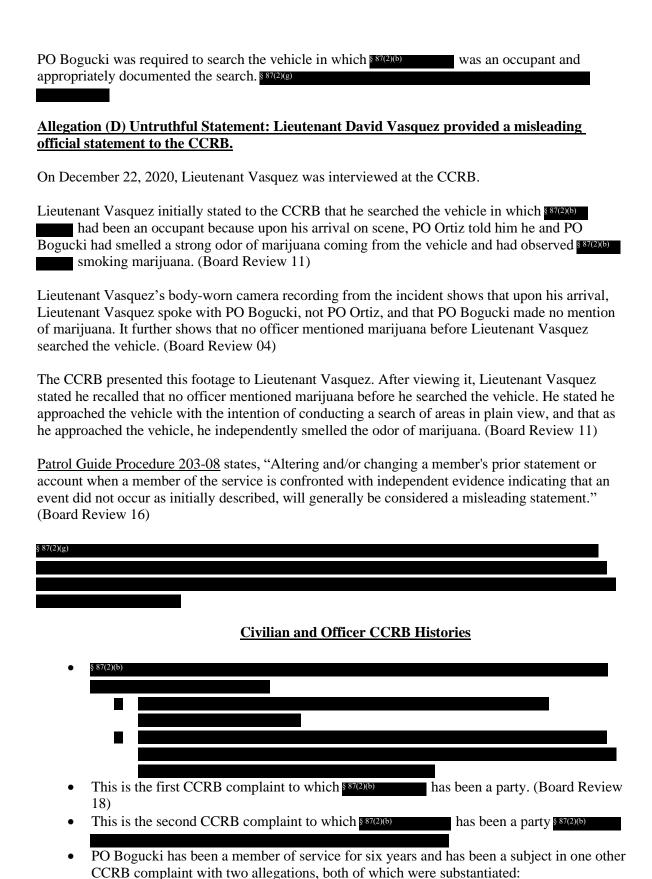
## Allegation (C) Abuse of Authority: Outside the 43<sup>rd</sup> Precinct Stationhouse, Police Officer Edward Bogucki searched the vehicle in which \$87(2)(b) was an occupant.

stated that when his vehicle was towed, he followed the truck to the 43<sup>rd</sup> Precinct stationhouse and observed officers search his vehicle. (Board Review 06)

PO Bogucki stated that he conducted an inventory search of the vehicle at the 43<sup>rd</sup> Precinct stationhouse. (Board Review 08)

On March 10, 2020, PO Bogucki prepared NYPD Property Clerk Invoices (S87(2)(b)), (S87(2)(b)), and (S87(2)(b)) for (S87(2)(b)) s Honda Accord, valuables found inside the vehicle, and alleged marijuana. He noted the invoicing command as the 43<sup>rd</sup> Precinct. (Board Review 14)

Patrol Guide Procedure 218-13 requires officers to conduct an inventory search of any property that comes into the custody of [the] Department. It further requires officers to search the interior of a vehicle when the Department takes custody of one, remove all valuables from the vehicle, and invoice them on a separate property clerk invoice. (Board Review 15)



CCRB CTS – Confidential Page 5

CCRB Case # 202002284

training. § 87(2)(g) Lieutenant Vasquez has been a member of service for 25 years and has been a subject in five other CCRB complaints and nine allegations, none of which was substantiated. § 87(2)(g), § 87(4-b) Mediation, Civil and Criminal Histories This case was unsuitable for mediation. On February 8, 2021, the New York City Office of the Comptroller stated they found no notices of claim regarding this complaint. (Board Review 23) Squad No.: 09 Christopher Olmsted Investigator Chris Olmsted Investigator: August 23, 2021 Signature Print Title & Name Date Squad Leader: \_Monique West\_ IM Monique West 8/30/2021 Print Title & Name Signature Date Reviewer:

201905380 involved substantiated allegations of a frisk and a threat of arrest. The board recommended formalized training and the NYPD imposed formalized

Print Title & Name

Signature

Date